



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,020	04/15/2004	Daniel Ostgard	032301.3721	7502

25461 7590 08/01/2006

SMITH, GAMBRELL & RUSSELL
SUITE 3100, PROMENADE II
1230 PEACHTREE STREET, N.E.
ATLANTA, GA 30307-3592

EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
----------	--------------

1754

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,020	Applicant(s) OSTGARD ET AL.	
	Examiner Stuart Hendrickson	Art Unit 1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/24/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1754

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30-32, 35-38 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schuetz et al. 5536694.

The reference teaches, especially in columns 4, 5 and 8, Raney copper of 54 microns size alloyed with aluminum (50-50) and doped with a metal.

The recitation of Pt group metals (ie, noble metals) as dopants renders the claims unpatentable. If a matter of selection among a list, then this is obvious. If small enough a genus to anticipate, then the teaching anticipates. Similarly, with respect to claim 31, col. 3 line 62 teaches 30:70 Al:Cu; the effect recited is deemed possessed since the composition is met.

Concerning claims 35-38, process steps do not limit the product being claimed; no differences are seen. Note also the teaching of col. 4 line 54.

Claims 33, 34, 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Schuetz et al.

The reference overlaps the range of metal of claim 33 in col. 6 line 9. Choosing the claimed amount of Pt group metal is an obvious expedient of optimization of catalytic effect versus cost; In re Boesch 205 USPQ 215.

The reference does not explicitly teach the lack of micropores (claim 34), however this appears to be possessed by virtue of the teaching of col. 7 lines 5-10, which indicate lack of surface area. Alternately, col 4 lines 60 et seq. teach that pore size may be optimized. Choosing not to have micropores is an obvious expedient to optimize porosity and surface area of col. 7.

Applicant's arguments filed 7/24/06 have been fully considered but they are not persuasive.

The argument of picking-and-choosing is not persuasive, as doing so is at the very least prima-facie obvious. Concerning the allegation of unexpected results, the process of using is not under examination. Further, the claims are not limited to the alleged unexpected materials.

Art Unit: 1754

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, especially the teachings of EP '152 ex. 17, are noted but not applied to avoid duplication of rejection. It is noted that the oath appears to be from the parent file.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

A handwritten signature in black ink, appearing to read 'Stuart Hendrickson', is positioned above the printed name.

Stuart Hendrickson
examiner Art Unit 1754